UNITED NATIONS

E

Economic and Social Council

Distr.
GENERAL

E/CN.4/2002/NGO/10
24 January 2002

ENGLISH AND FRENCH ONLY

COMMISSION ON HUMAN RIGHTS
Fifty-eighth session
Item 11 (d) of the provisional agenda

CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF: INDEPENDENCE OF JUDICIARY, ADMINISTRATION OF JUSTICE, IMPUNITY

Written statement* submitted by the Romanian Independent Society of Human Rights, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[11 January 2002]

*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE. * 2 0 0 2 0 1 0 2 7 3 *

ENG

The Romanian Independent Society of Human Rights (SIRDO) is a non-governmental organisation set up in 1990 with the purpose to protect and promote human rights and fundamental freedoms, according with the principles of the UN Charter and the universal and regional conventions and treaties Romania is part to. A special attention is given to the way in which the Romanian state is preoccupied by implementing international instruments focused on the respect of human rights.

Maintaining military structures in the activities of police legal investigation within the penitentiary personnel and the Prosecutor's offices is against international standards and recommendations on penal investigation and detention, it blocks the control of civil structures over the activity developed in military regime. SIRDO's database has a considerable number of cases where persons investigated in police arrest have become victims of torture, inhuman and degrading treatment. Physical and psychological violence, the constraints, are exercised by the investigating police officers against persons who committed crimes or are suspected to have committed crimes. In this stage, torture has the purpose to make the victim recognise the accusations of the police officers and sign incriminating declarations. The prosecutors are often accused by victims of torture on exercising maltreatments, violating the legal obligations on the survey of penal investigation, the legality and basis of preventive arrest. During detention, in penitentiaries, torture committed by military personnel against prisoners is a form to punish those who protest against abuses they are being subjected to.

According with the internal legal framework, with the Penal Code and the Penal Procedure Code, in Romania only prosecutor's offices and military instances may dispose sending to court, namely judging police officers or guards using torture and maltreatment. Thus, according with Law no. 54/1993, only the military prosecutor (active officer) is the authority with exclusive competence to investigate the complaints made by persons abused during investigations.

In solving these complaints, military prosecutors rely on the police during investigations. Military prosecutors are not independent and impartial, refusing systematically to send to court police officers for abusive acts. We may conclude that the person detained subjected to maltreatment by the police finds it very difficult to defend in the abyss of authorities and procedures, not characterised by celerity.

Considering the above mentioned, the prosecutor continues the investigation in the direction signalled by police officers, not considering the statement of the person accused.

The hesitation of judges to infirm the requisitory of prosecutors, either for fear that the decisions should not be reformed by superior instances, with negative consequences on the annual qualification report, or wishing not to complicate their motivation, which tends to be suffocating.

Thus, it is seldom that instances exercise their active role in finding the truth and pronounce too easily, only on the basis of declarations made by the person accused during detention.

The impunity of authorities guilty of physical and psychological violence against individuals, the intimidation and manipulation, the formalism in the approach of complaints are already a traditional practice of persecution converted in a repressive system. These practices have deep roots in Romania's communist past experience and in the present conditions, they represent a transfer towards the new structures of power. It is clear that they make it impossible to implement international conventions and to exercise an independent civil administrative control.

All that instances do is copy the requisitory as it was written by the prosecutor and exclude or insufficiently analyse the proofs asked by the defence. An increased attention is given to the statements made by the person accused during detention, against those made during penal investigation. In order to prevent abusive acts from the police, it is a must to take the preventive arrest centres out of the authority of the Ministry of Interior and placing them under the control of the Ministry of Justice, in practice being proved that, most often, the persons subjected to maltreatments hesitate to talk about that, even to the prosecutor, for fear they should repeat at the return in the detention place.

Finally, we must mention that order 140/1974 regimenting the conditions of preventive detention has a secret character, while it is obvious that it must appear in a law that should be at the disposal of the public.

We must say that the changes in the Penal Code, in the sense of making even more difficult the punishments depriving of liberty, can only institute a repressive penal system against the real needs of social reinsertion of persons convicted. These aspects are completely against tendencies and preoccupations of the advanced countries in the direction of promoting alternative means to the deprivation of liberty, to the maximum decrease of its incidence, considering both the high costs of detention and its insecure educational character.

The Romanian legal system is affected by the provisions of constitutional norms regimenting the attributions of the Superior Council of Magistrates. Thus, the Minister of Justice is the one that presides the sessions of the Council and the one that names 1/3 of its members. By the merger of politics and justice, it is obvious that the independence of justice is not ensured in Romania, especially that the Superior Council of Magistrates has the role of discipline council of judges.

Considering these aspects that make the object of activities developed by SIRDO, we think the following measures are to be taken urgently:
- harmonise the Romanian penal legislation according with international provisions;
- demilitarise the police and the penitentiary personnel in order to have a real transparency on the activities; this measure would also lead to the possibility of investigating and judging police officers by prosecutors and civil judges;
- the change of legal norms into force in order to avoid the mixture of the political factor in justice and insure the independence of the legal system;
- strengthening the active role of judges in solving causes in order to find the whole truth of the facts and clear up the conditions of investigation for the persons accused, especially in the case of those claiming to have been victims of torture, inhuman and degrading treatments.